

ARTICLE 2800. Amendments

§ 212-2801. Amendment after recommendation by Planning Commission.

Whenever the public necessity, convenience, general welfare or good zoning practice requires, the Borough Council may, by ordinance, after receipt of recommendation thereon from the Planning Commission and subject to the procedures provided by law, amend, supplement or change the regulation, district, boundaries or classifications of property, now or hereafter established by the Chapter or amendments thereof. It shall be the duty of the Planning Commission to submit its recommendations regarding all applications or proposals for amendments or supplements to the Borough Council.

§ 212-2802. Procedure for amendments.

Applications for any change of district boundaries or classifications of property as shown on the Zoning Map shall be submitted to the Planning Commission at its public office, upon such forms, and shall be accompanied by such data and information as may be prescribed for that purpose by the Planning Commission, so as to assure the fullest practicable presentation of facts for the permanent record. Each such application shall be verified by at least one (1) of the owners of property within the area proposed to be reclassified, attesting to the truth and correctness of all facts and information presented with the applications. Applications for amendments initiated by the Planning Commission shall be accompanied by its motion pertaining to such proposed amendment.

- A. Any person or persons desiring a change in the zoning classification of property shall file, with the application for such change, a statement setting forth the names and addresses of the owners of all properties situated within one thousand (1,000) feet of any part of the property the zoning classification of which is proposed to be changed.
- B. Before submitting its recommendations on a proposed amendment to the Borough Council, the Planning Commission shall hold a public hearing thereon and give public notice. The notice shall include information regarding text and map.
- C. In addition to the published notice as hereinbefore specified, the Planning Commission shall give notice of the time, place and purpose of public hearings to be held by it on proposed amendments or supplements by mailing a postal card or letter notice not less than fourteen (14) days and not more than thirty (30) days prior to the date of hearing, to the owners of all properties lying within one thousand (1,000) feet of any part of the property proposed to be changed. The intention of this section is to provide, so far as may be possible, due notice to the persons substantially interested in the proposed change that an application is pending before the Planning Commission, proposing to make a change in the Zoning Map or the regulations set forth in this Chapter.
- D. The Planning Commission may recommend that the application be granted as requested, or it may recommend a modification of the zoning amendment requested in the application, or it may recommend that the application be refused. These recommendations shall then be certified to the Borough Council.
- E. Prior to the presentation of and hearing on any proposed ordinance amending, supplementing or changing any regulations, restrictions or boundaries hereof, an informative notice of the proposed enactment shall be given in the manner set forth in this section, and shall include

the time and place of the meeting at which passage will be considered, a reference to a place within the Borough where copies of the proposed ordinance may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance once in one (1) newspaper of general circulation in the Borough not more than sixty (60) days nor less than seven (7) days prior to passage. Publication of the proposed ordinance shall include either the full text thereof or the title and a brief summary, prepared by the Borough Solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:

- (1) A copy thereof shall be supplied to a newspaper of general circulation in the Borough at the time the public notice is published.
 - (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners.
- F. Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereof, pursuant to public notice. In the case of an amendment other than that prepared by the Planning Commission, the governing body shall submit each such amendment to the Planning Commission at least thirty (30) days prior to the hearing on such proposed amendment to provide the Planning Commission an opportunity to submit recommendations. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include land previously not affected by it, the governing body shall hold another public hearing, pursuant to public notice, before the proceeding to vote on the amendment as revised or further revised. At least thirty (30) days prior to the hearing on the ordinance by the local governing body, the Borough Planning Commission shall submit the proposed ordinance to the County Planning Commission for recommendations.
- G. Within thirty (30) days after enactment, a copy of the amendment to the Zoning Ordinance shall be forwarded to the county planning agency.
- H. A landowner who desires to challenge on substantive grounds the validity of an ordinance or map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the governing body with a written request that his challenge and proposed amendment be heard and decided as provided in Section 609.1 of Act 247, as amended. The governing body shall commence a hearing thereon within 60 days of the request as provided in Section 908 of Act 247, as amended. The curative amendment shall be referred to the Planning Commission as provided in § 212-2802(F), and notice of the hearing thereon shall be given as provided in § 212-2802(E) of this Chapter, Section 609.1 of Act 247, as amended. The hearing shall be conducted in accordance with the following procedure:
- (1) The President of the Borough Council shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
 - (2) The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
 - (3) Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

- (4) The governing body shall keep a stenographic record of the proceedings, and a transcript of the proceedings and copies of graphic or written material received in evidence shall be made available to any party at cost.
- (5) The governing body shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda or other materials unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his or her representative unless all parties are given an opportunity to be present.
- (6) The governing body shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the governing body. Each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons thereof. Conclusions based on any provisions of this Chapter or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
- (7) Where the governing body fails to render the decision within the period required by this subsection or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed, in writing, to an extension of time.
- (8) A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following this date. To all other persons who have filed their name and address with the governing body not later than the last day of the hearing, the governing body shall provide, by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

I. Procedure upon municipal curative amendments.

- (1) A Borough, by formal action, may declare its Zoning Chapter or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration and proposal, the governing body of the Borough shall:
 - (a) By resolution, make specific findings setting forth the declared invalidity of the Zoning Chapter which may include references to specific uses which are either not permitted or not permitted in sufficient quantity, reference to a class of use or uses which require revision or reference to the entire Chapter which requires revisions.
 - (b) Begin to prepare and consider a curative amendment to the Zoning Chapter to correct the declared invalidity.
- (2) Enactment of curative amendment.
 - (a) Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough shall enact a curative amendment to reaffirm the validity of its Zoning Ordinance pursuant to the provisions required by Section 609.2 of the Municipalities Planning Code, Act 247, as amended, to cure the declared invalidity of the Zoning Chapter.

- (b) Within thirty (30) days of the enactment of a curative amendment, a copy of said amendment shall be sent to the Allegheny County Planning Commission.
- (3) Upon the initiation of the procedures, as set forth in § 212-2802(H)(1), the governing body shall not be required to entertain or consider any landowner's curative amendment filed under Section 609.1 of the Municipalities Planning Code, Act 247, as amended, nor shall the Zoning Hearing Board be required to give a report requested under Section 909.1 or 913.2 of the Municipalities Planning Code, Act 247, as amended, subsequent to the declaration and proposal, based upon the grounds identical to or substantially similar to those specified in the resolution required by § 212-2802(H)(1)(a). Upon completion of the procedures as set forth in § 212-2802(H)(1) and (2), no right to a cure pursuant to the provisions of Sections 609.1 of the date of the Municipalities Planning Code, Act 247, as amended, shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended Zoning Ordinance for which there has been a curative amendment pursuant to this section.
- (4) A Borough having utilized the procedures as set forth in § 212-2802(H)(1) and (2) may not again utilize said procedure for a thirty-six (36) month period following the date of the enactment of a curative amendment or reaffirmation of the validity of its Zoning Chapter pursuant to § 212-2802(H)(2); provided, however, that if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the municipality by virtue of a change in statute or by virtue of a Pennsylvania Appellate Court decision, the municipality may utilize the provisions of this section to prepare a curative amendment to its ordinance to fulfill said duty or obligation.

§ 212-2803. Application fees and payment of costs.

- A. At the time that an application for the change of zoning districts is filed with the Planning Commission, as provided herein, there shall be deposited with the Borough Treasurer the sum of two hundred dollars (\$200) as a fee to cover investigation, legal notices and other reasonable expenses incidental to the determination of such matter, but such fee shall not include and cover legal expenses of the Planning Commission, expenses for engineering, architectural or other technical consultants or expert witness costs. Such fee to be for one (1) lot or part of one (1) lot. An additional fee of five dollars (\$5) shall be deposited for each additional lot, or part of an additional lot, which may be included in the request, such additional lot or part of a lot to be adjacent to each other. Such sums so deposited shall be credited by the Borough Treasurer to the general fund of the Borough.
- B. If a verbatim record of proceedings is desired, such cost of recording must be borne by the applicant (ten dollars (\$10) per tape).
- C. Applicants requesting a transcript of proceedings shall pay all costs of said transcript (ten dollars (\$10) per transcript).
- D. Any recommendation of the Planning Commission shall be certified to the Borough Council by the Planning Commission, and in the event of an adverse recommendation, any applicant or affected person may, within ten (10) days of such certification, appeal the recommendation of the Planning Commission to the Borough Council. Such appeal shall request that the Borough Council cause an ordinance to be prepared and a public hearing scheduled on the applicant's request. In the event that the applicant or affected person elects not to appeal the

decision of the Planning Commission, then a refund of one hundred dollars (\$100) shall be made to the applicant or affected person by the Borough Treasurer.

§ 212-2804. When effective.

Pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Act 247, as amended the effective date of this Chapter shall be the date on which the Franklin Park Borough Council has formally adopted this Chapter.